

1 Michael J. Aguirre, Esq., SBN 060402
maguirre@amslawyers.com
2 Maria C. Severson, Esq., SBN 173967
mseverson@amslawyers.com
3 AGUIRRE & SEVERSON, LLP
501 West Broadway, Suite 1050
4 San Diego, CA 92101
Telephone: (619) 876-5364
5 Facsimile: (619) 876-5368

6 Catherine Janet Kisse-Sandoval
Csandoval@scu.edu
7 Santa Clara University School of Law
500 El Camino Real
8 Santa Clara, CA 95053-0421
Telephone: (408) 551-1902
9 Facsimile: (408) 554-4426

10 Attorneys for *Amici* Alex Cannara
and Gene A. Nelson
11

12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 UNITED STATES OF AMERICA,
16
17 Plaintiff,
18
19 v.
20 PACIFIC GAS AND ELECTRIC
COMPANY,
21 Defendant.
22

Case No. CR 14 -0175 WHA

**AMICI BRIEF IN RESPONSE TO THE
COURT'S ORDER TO SHOW CAUSE
RE CONDITIONS OF PROBATION
[DOCUMENT NO. 1277, 1280]**

Judge: Hon. William Aslup

Hearing Date: February 3, 2021

Time: 8:00 a.m.

Location: by Zoom (if not in person)

TABLE OF CONTENTS

I.	Improving PG&E’s Vegetation Management, and the Information Management, Record-Keeping, and Information Communication Systems that Drive PG&E’s Management and Operation, is Critical to Public Safety and Preventing the Offender from Committing Additional Crimes	1
II.	Amici’s Proposed Conditions 13-16 and Summary Analysis.....	3
	Proposed Condition 13	3
	Proposed Condition 14	4
	Proposed Condition 15	5
	Proposed Condition 16	6
A.	The Proposed Probation Conditions, Augmented by Amici’s Suggestion, Reasonably Relate to PG&E’s Crimes, the Goals of Federal Sentencing, and Do Not Interfere with CPUC Jurisdiction	8
B.	PG&E’s Poor Record-Keeping and Information Management Drive its Criminal Conduct including the San Bruno Explosion, the Camp Fire, and other Fires PG&E Ignited While on Criminal Probation.....	12
C.	PG&E’s Corporate Conduct Constructs Risk and Endangers Public Safety	14
D.	PG&E’s Recklessly Poor Information and Record-Keeping Management Institutionalize its Dangerous Operation and Undermine Decision-Making	15
III.	PG&E’s Brief Submitted in Response to the OSC is Neither Verified by a PG&E Officer Nor Supported by Cited Evidence	18
IV.	PG&E’s Brief in Response to the OSC Fails to Recognize PG&E’s Lack of Effective Operation, and its Proposed Additions to the OSC are not Well-Designed to Protect Public Safety, are Vague, and Create Trap Doors that Undermine the OSC’s Goal to Protect Public Safety	19
(A)	PG&E’s PSPS Decisionmaking and Operation is Not Effective as PG&E Effectively Admits it Does Not Currently Consider the Status of Vegetation Management and Compliance with Federal and State Law	19

1	B)	The Scope of PG&E's PSPS Should Consider	
2		Hazardous Vegetation Including that Which	
3		Borders and is Likely to Make Contact	
4		with its Lines and Facilities	20
5	C)	PG&E's Proposal to Limit Condition 11 to	
6		Priority 1 and 2 Vegetation Lacks Sufficient	
7		Information about the Origin of those Priorities.	
8		What Priority Categories are Omitted, and	
9		Analysis of the Likely Public Safety Consequences	
10		of Limiting the Probation Conditions	21
11	D)	PG&E Should be Required to Immediately	
12		Comply with the Proposed Probation Conditions:	
13		Compliance by July 2021 is Too Late to	
14		Protect Public Safety	24
15	E)	PG&E Effectively Admits that its Poor Information	
16		Management Does Not Currently Support	
17		Consideration of its Vegetation Management in its	
18		PSPS Decision-making, Despite GO 95, Rule 18's	
19		Requirement that Utilities Create an Auditable	
20		Vegetation Management Program	25
21	F)	Access Issues Do Not Provide an Escape Hatch	
22		from the Duty to Comply with Federal or State Law	
23		or PG&E's Probation Conditions; PG&E Should	
24		Document Access Issues and take Appropriate	
25		Steps to Resolve Them Promptly	26
26	V.	PG&E's Failure to Document, Follow-up, and	
27		Resolve Access Issues Violates its Duty of Safe	
28		Operation and Raises Concern that PG&E's	
		Conduct Obstructs Justice	29
	VI.	This Court Should Order PG&E to Use Internet of	
		Things Devices Such as Chips or QR Codes Instead of	
		Spray Painting Trees in High Wildfire Danger Zones to	
		Protect Public Safety	30
	VII.	Conclusion	32

1 *Amici* Alex Cannara and Gene A. Nelson, pursuant to the Court’s Order
 2 (Document No. 1280), respectfully submit this *amici curiae* brief in response to the
 3 Court’s order to show cause (OSC) dated December 29, 2020. (Document No. 1277).
 4 *Amici* discuss several reasons why we believe additional conditions should be added
 5 to PG&E’s probation to protect public safety, reduce the likelihood of the Offender
 6 committing additional crimes, and to promote the Offender’s rehabilitation. *Amici*
 7 offer additional conditions to improve PG&E’s information and record-keeping
 8 management that drives its vegetation management and operational activities and
 9 deficiencies, including PG&E’s criminally reckless conduct.

10
 11 **I. Improving PG&E’s Vegetation Management, and the Information**
 12 **Management, Record-Keeping, and Information Communication Systems**
 13 **that Drive PG&E’s Management and Operation, is Critical to Public Safety**
and Preventing the Offender from Committing Additional Crimes

14 As the Court’s OSC notes on pgs. 13-15, by PG&E’s own admission,
 15 “[v]egetation-caused ignitions are one of the largest drivers of utility-caused
 16 wildfires, and the largest driver in HFTD [High Fire-Threat Districts] areas. We
 17 estimate that 70 percent of the time, if identified vegetation is not worked, it can
 18 cause a power-line failure under high fire threat weather conditions.”¹

19 PG&E’s recklessly irresponsible information and record-keeping management,
 20 data operations, and information communication (collectively “Data Operations”)
 21 undermine the effectiveness of its operations, vegetation management, and the
 22 proposed probation conditions. PG&E’s *information management and record-*
 23 *keeping failures* are fundamentally *management failures* that predicate fires,
 24 explosions, and other hazards. PG&E is (or should be) an information management
 25 company, that uses its information and records to manage its physical assets, assess
 26

27
 28 ¹ *Pacific Gas and Electric Company Quarterly Report on 2020 Wildfire Mitigation Plan for May to July 2020* (Sept. 9, 2020), at 11.

1 and report on its practices and asset conditions, and deploy its workforce, hardware,
2 software, and information assets and analysis to ensure safe and reliable operation.

3 Amici support the Court's proposed probation conditions 11 and 12 to protect
4 the public from further death and destruction and to help rehabilitate the Offender
5 (18 U.S.C. §§ 3553(a)(1), (a)(2)), with an edit to condition 11 proposed by Amici as
6 indicated below in bold:

7 11. In determining which distribution lines in Tier 2 or Tier 3 to de-
8 energize during a PSPS, PG&E must take into account all information
9 in its possession and in the possession of its contractors and
10 subcontractors concerning the extent to which trees and/or limbs
11 bordering those lines remain in violation of Public Resources Code
12 Section 4293, GO 95, **the California Public Utilities Code, the**
CPUC's Orders, Decisions, or rules, FERC FAC-003-4, and/or its
own wildfire mitigation plan **as approved by the CPUC**.

13 12. To the extent that such information shows that such trees and limbs
14 present a safety hazard in the event of a windstorm, PG&E must make
15 a specific determination with respect to that distribution line and it must
16 de-energize it unless PG&E finds in writing that there are specific
reasons to believe that no safety issue exists.

17 These conditions appropriately require PG&E to take into account the
18 necessary factor of the status of its vegetation management and compliance with
19 federal and state law. Amici suggest including reference to the California Public
20 Utilities Code, the CPUC's Orders, Decisions, or rules, as compliance factors that
21 should be taken into account in deenergization decisions since General Order (GO)
22 95 relies on the California Public Utilities Code and does not displace other
23 statutory duties such as the duty to provide safe, reliable service under Cal. Pub.
24 Util. Code § 451. PG&E should be required to consider compliance with its wildfire
25 mitigation plan as approved by the CPUC in deenergization and operational
26 decisions, recognizing that plan does not displace other responsibilities under the
27 Public Utilities Code, Public Resources Code § 4293, and FERC FAC-003-4
28 requiring vegetation management near transmission lines.

To safely operate as required by Public Utilities Codes §§ 451 and 8386(a), PG&E should have been considering its compliance with state and federal law and the status of its work in its operational decision including power shutoffs. Amici suggests that the court add the following conditions to ensure that complete and accurate information, information systems and management inform those decisions, as well as the status of compliance with federal and state law.

It is vital to public safety that recidivist PG&E improve the integrity and accuracy of information in its and its subcontractors' possession, its information and record-keeping management systems, and communication of that information. Through adoption of Amici's proposed conditions 13-16, below, this Court should ensure that PG&E's poor information and record management do not undermine the information that informs its actions and decision-making about deenergization, planning to avoid the need for power shutoffs, and operational and strategic decisions and conduct.

II. Amici's Proposed Conditions 13-16 and Summary Analysis

Amici respectfully suggest that this court add the following conditions to the Offender's probation, numbered for purposes of tracking:

Proposed Condition 13:

PG&E shall hire a Chief Data Operations Officer within 90 days with responsibility over a sufficient staff or no fewer than 10 data operations, information management, record-keeping, engineering, and legal professionals with responsibility for reviewing PG&E's information management and record-keeping systems and their relationship to PG&E's operations including vegetation management work and PSPS, and to report to PG&E's CEO, the PG&E Board, the Monitor, parties to this action including amici and this court within 180 days about recommended actions to improve PG&E's information and record-keeping management and the relationship between information management and analysis and action to operate safely. PG&E shall fund and support this position as a long-term corporate strategy to identify and remediate deficiencies in PG&E's information management and record-keeping systems, including those of its contracts and

1 subcontractors, and better use information and records to trigger and
2 inform safe operation.

3 **Analysis:** As this Court required in its probation conditions 8 and 10 which
4 required PG&E to hire Vegetation Management and Transmission Inspection
5 Management teams, ordering PG&E to hire a Chief Data Operations Officer and
6 team will ensure that PG&E improves the integrity of its information and record-
7 keeping and communication. This step is necessary to ensure that proposed
8 probation conditions 11 and 12 transmit complete and accurate information about
9 the status of vegetation management and compliance with federal and state law to
10 the PSPS decision-making process.

11 PG&E needs accurate and complete information including record-keeping to
12 communicate to work teams over time, whether hours, days, weeks, months, years,
13 or decades. PG&E's recklessly poor job with Data Operations drives many of its
14 safety violations and its criminal conduct ranging from the San Bruno natural gas
15 explosion to the many fires its facilities, information, and management failures have
16 ignited. Without Proposed Condition 13, PG&E's recklessly poor information
17 management will undermine compliance with Conditions 11 and 12, other probation
18 conditions, and fuel public safety danger.

19 **Proposed Condition 14:**

20 PG&E shall immediately initiate steps to prevent data falsification or
21 omission. This includes, but is not limited to, issuing orders to its
22 employees, contractors, and subcontractors and creating information
23 management and record-keeping systems that prevent: a) the creation of
24 false records such as by "scheduling" inspection or work in the past (a false
25 records that makes it appear that work has been done); b) omission of input
26 of information in data fields; c) omission of sufficient information to
27 identify issues and follow-up needs. PG&E shall report to the Monitor, the
28 Court, parties including Amici, its CEO and Board within 60 days on steps
it has initiated to prevent data falsification or omission.

Analysis: As the court recognized, PG&E's systems contain false records which fail to trigger appropriate follow-up such as removal of dangerous vegetation. It appears that the schedule of inspections in the past may have contributed to the failure to remove dangerous trees that contributed to the Zogg fire. (OSC, p. 2, 12). PG&E created systems that allow for input of inaccurate and false information such as scheduling inspections in the past, omitting critical data, or not providing sufficient information for follow-up. While businesses across America commonly adopt practices to prevent these errors, PG&E's failure to implement data integrity practices leaves the public at risk. Amicus respectfully suggest this order is necessary to protect public safety, additional offenses while on probation, and to enable the effectiveness of other probation conditions.

Proposed Condition 15:

PG&E shall within 90 days propose a plan to the Court, the Monitor, parties including amici, the CEO, and the Board to use sensors, QR codes, or other markets that actively communicate information (collectively, Internet of Things (IoT) devices) to mark trees for removal and track the status of the tree removal process for vegetation management. This proposal shall plan deployment of IoT devices for vegetation management in Tier 2 and 3 High Wildfire Danger zones in lieu of using spray paint or other passive markets no later than 180 days after this order. The information from the IoT device shall be integrated into PGE's information management, record-keeping, and work system to track progress from identification of vegetation requiring additional work such as trimming, removal, or monitoring, to the follow-up work, and the consideration of the status of that work in the PSPS process and in PG&E's daily operations.

Analysis: As discussed above, PG&E's continued reliance on spray paint to mark trees for removal effective relies on passive graffiti to communicate next steps to tree trimming or removal crews. PG&E's practices are decades out-of-date and fail to take advantage of prudent and widespread technologies farmers, the post office, and many businesses uses to track inventory and improve workflow. Ordering PG&E to propose a plan to adopt IoT devices for vegetation management

in Tier 2 and 3 High Wildfire Danger zones in lieu of using spray paint or other passive markets no later than 180 days after this order will protect public safety by informing information management systems and enhancing the ability to track and communicate critical work. Doing so will protect public safety in a manner no spray paint can.

Proposed Condition 16:

PG&E shall immediately initiate consideration of the status of information management based on the records in its possession, including in the possession of its contractors or subcontractors, in PSPS and in daily operation. Within 90 days PG&E shall report to the Monitor, the Court, parties including Amici, its CEO and Board about its steps to improve its information management and record-keeping process to improve information integrity, inform analysis, and inform and enhance daily operation including PSPS.

Analysis: PG&E is already required by California law including GO 95 to maintain vegetation management records for at least 10 years and to develop an auditable vegetation management program. Ordering PG&E to report within 90-days about its steps to improve its Data Operations will ensure the integration of accurate data and records into PG&E's decision-making. Doing so will enhance public safety as the public, including Amici, face continued threats from PG&E's operations.

Northern California experienced a high wind event on January 19, 2021 during which PG&E shutoff power to thousands of Californians.² PG&E reported that it detected windspeeds of up to 100 miles per hour in some locations in its service territory.³ With atmospheric rivers anticipated in Northern California and other conditions, it is likely PG&E customers and residents sharing the air basin

² PG&E, *PG&E Crews Out in Force Making Repairs After Offshore Windstorm Sweeps Through State, Causing Wind Hazards and Related Outages*, PG&E CURRENTS, Jan. 19, 2021, <https://www.pgecurrents.com/2021/01/19/pge-crews-out-in-force-making-repairs-after-offshore-windstorm-sweeps-through-state-causing-wind-hazards-and-related-outages/>.

³ *Id.*

1 with PG&E territory will face more high wind events in the coming years. It is
2 imperative that this Court order PG&E to improve and report on its Data Operations
3 to enhance the management of its system, including PSPS planning, avoidance,
4 execution, daily and strategic planning, to protect life, limb, and property. Doing so
5 will rehabilitate the Offender and reduce the likelihood of more criminal offenses
6 including felonies while and after PG&E is on probation, accomplishing the goals of
7 the federal sentencing guidelines and federal probation.

8 Amici's proposed conditions are necessary and appropriate to ensure that
9 complete and accurate information is considered in deenergization and operational
10 decisions -- critical to both the millions of PG&E customers and those impacted by
11 foul and dangerous air quality when PG&E's criminal mismanagement ignites a
12 wildfire or causes an explosion.

13 Poor information and record management institutionalizes reckless behavior
14 that enables criminal recklessness and endangers public safety. It creates
15 information blindness, inaccuracy, uncertainty, and undermines operational
16 integrity. Work is wasted because it is not properly tracked for appropriate followup.
17 Lack of information management obscures reasons for failures, e.g. what types of
18 access issues are alleged, how can those access issues be resolved.

19 PG&E has *designed* a system that depends on the transmission of knowledge
20 and information from one set of workers to another, often separated by significant
21 time periods. A different crew inspects and identifies trees to be removed than the
22 crew which brings chainsaws to remove the trees. Thus, accurate recording and
23 transmission of information and tracking of that handoff process is critical to make
24 sure a tree identified as posing a danger to a line and the community is timely
25 removed.

26 PG&E's current information system is a reckless design that allows its users
27 to schedule an inspection in the past (which results in no inspection conducted in the
28 future) (*See e.g.* OSC, p. 2, 12) or to skip critical fields, thus fueling violations of

1 law, i.e., Pub. Resources Code § 4293, Pub. Util. Code §§ 451, 8386(a), CPUC
 2 General Order 95, and federal law, FERC FAC-003-4. California Public Utilities
 3 Code § 8386(a) requires that “[e]ach electrical corporation shall construct, maintain,
 4 and operate its electrical lines and equipment in a manner that will minimize the risk
 5 of catastrophic wildfire posed by those electrical lines and equipment.”

6 As discussed below, the Court’s proposed conditions in the OSC and Amici’s
 7 proposals are imperative to protect public safety and mitigate the potential for
 8 additional offenses while the convicted felon corporation remains on probation.
 9 Amici respectfully recommend this Court reject PG&E’s proposed additions to the
 10 OSC.

11 **A. The Proposed Probation Conditions, Augmented by Amici’s Suggestion,**
 12 **Reasonably Relate to PG&E’s Crimes, the Goals of Federal Sentencing,**
 13 **and Do Not Interfere with CPUC Jurisdiction**

14 PG&E’s data management failures are a thread that run through its criminal
 15 activity that led to the San Bruno explosion in 2010 and to many of the fires PG&E’s
 16 management of its natural gas and electric lines ignited. PG&E’s reckless data
 17 management fuels its vegetation management failures and its failure to properly track
 18 and follow through with its own work and asset conditions necessary for safe
 19 operation. Including provisions in the OSC to improve PG&E’s information
 20 management practices will provide the data necessary to prevent PG&E from putting
 21 the public in danger through its reckless management.

22 The facts constituting PG&E’s record of reckless operations belie its
 23 objections to the OSC’s Proposed Conditions. PG&E argues there is no reasonable
 24 relation between its original offenses (violations of the National Pipeline Safety Act
 25 and Obstruction of Justice) and the Proposed Conditions relating to its electric
 26
 27
 28

1 distribution businesses.⁴ PG&E contends without explanation that the Probation
 2 Conditions interfere with California's authority to regulate PSPS events.⁵ It also
 3 argues that the Proposed Conditions are not reasonably necessary to accomplish the
 4 purposes of the sentencing.⁶ Each of these objections ignores the relationship
 5 between PG&E's poor information management and record-keeping and its criminal
 6 conduct.

7 The proposed conditions bear a reasonable relationship to PG&E's original
 8 offenses because PG&E's poor information management, record-keeping, and
 9 operational management led to the San Bruno natural gas explosion. PG&E
 10 compounded its offenses of the National Pipeline Safety Act by obstructing the
 11 NTSB's investigation, and was convicted of obstruction of justice.

12 In the nearly fifty years between the installation of sub-standard materials that
 13 ruptured in the 2010 San Bruno natural gas explosion, and in the decade following
 14 that explosion, PG&E failed to properly maintain its records or to manage
 15 information critical to its gas and electric operations, and failed to link accurate
 16 information (including information about PG&E's own work and assets) to
 17 appropriate action.

18 As a result of its faulty data operations, PG&E failed to conduct appropriate
 19 work, and missed work it earlier identified as important, such as failing to remove
 20 trees marked as a danger to powerlines, an omission that appears to have contributed
 21 to the deadly 2020 Zogg Fire. The proposed conditions that PG&E consider the
 22 status of vegetation management in power shutoffs, informed by better information
 23 and record management, will prevent the types of offenses which led to the death of
 24

25
 26 ⁴ PG&E, Comments, OSC, January 20 2020, note 2 (citing *United States v. Lorenzini*, 71 F.3d
 1489, 1493 (9th Cir. 1995)).

27 ⁵ *Id.* (citing *see United States v. Lakatos*, 241 F.3d 690, 695 (9th Cir. 2001)).

28 ⁶ *Id.* (citing *see United States v. Lorenzini*, 71 F.3d 1489, 1493, 1492 (9th Cir. 1995) (*See also*,
 e.g., Dkt. 1195 at 3-6; Dkt. 1187 at 12-17; Dkt. 976 at 13-50.))

1 eight people in San Bruno, 84 people in Butte County, and illegal fire(s) committed
 2 while on probation. CalFire, Shasta County, and Sonoma County are investigating
 3 whether PG&E was responsible for other fires ignited during PG&E's probation
 4 including the Kincade and Zogg Fires.

5 PG&E's argument that the Proposed Conditions are not reasonably necessary
 6 to accomplish the purposes of the sentencing, citing *U.S. v. Lorenzini*, 71 F.3d 1489,
 7 1493 (9th Cir. 1995), are without merit as it ignores the goals of the federal
 8 sentencing guidelines and federal criminal probation. In *Lorenzini*, the Ninth
 9 Circuit rejected a probation condition requiring the defendant to repay his court-
 10 appointed attorneys fees following defendant's bank fraud conviction. The Ninth
 11 Circuit determined that condition was not reasonably related "to the need for the
 12 sentence imposed to reflect the seriousness of the offense, to promote respect for the
 13 law, and to provide just punishment for the offense," 18 U.S.C. § 3553(a)(2)(A).

14 In contrast here, requiring PG&E to take the status of information about its
 15 vegetation management into account in its power shutoffs and operation, and
 16 Amici's proposals to improve PG&E's Data Operations, reflect the seriousness of
 17 PG&E's misconduct including its violations of federal and state law, obstruction of
 18 justice, and multiple offenses while on probation that resulted in at least 84 deaths.
 19 Requiring PG&E to consider its own information and improve its information
 20 management and data operations are a just condition of its punishment and should
 21 be part of PG&E's normal operations to protect public safety and ensure compliance
 22 with the law. Sadly, PG&E's record demonstrates the imperative of the Court
 23 ordering these measures to protect public safety, deter PG&E from committing more
 24 felonies while on probation, and rehabilitate PG&E.

25 While on probation, PG&E's poor information and operational management
 26 and lack of follow-up of its own work caused PG&E to fail to cut down trees
 27 identified for removal for over two years – the suspected cause in igniting the 2020
 28 Zogg fire per the CalFire investigation.

PG&E did not shut off the power in the Zogg fire area, despite urgent tree removal tasks pending for years in that area. People’s lives depend on this Court to require improvements in PG&E’s information management to mitigate the likelihood that PG&E will commit more criminal offenses and harm public safety. Thus, the probation conditions accomplish the purposes of federal sentencing and probation.

Neither do the proposed conditions interfere with the CPUC’s jurisdiction. PG&E’s citation to *U.S. v. Lakatos* does not support its argument that the Probation Conditions interfere with California’s authority to regulate PSPS events. The Ninth Circuit in *Lakatos* held that “[e]nforcement of the district court’s condition that Lakatos pay his entire child support debt in twenty-nine months would clearly nullify the effect of the preexisting child support order issued by the California Superior Court.”⁷ The proposed order does not nullify or contradict any order of the CPUC, neither does it interfere with the CPUC’s jurisdiction over PG&E.

The CPUC’s 2020 deenergization decision does not include in its guidelines a requirement that utilities consider the status of vegetation management or improve its information management, record-keeping, or information transmission, as a factor in power shutoff decision-making or its operations. CPUC D. 20-05-051 issued on May 28, 2020, required that utilities provide information on their websites regarding “de-energization mitigation efforts” including “asset and vegetation management, sectionalizing, switching, system hardening, and backup power projects they are undertaking to reduce the need for or scope of de-energization events, progress on implementing de-energization mitigation efforts to date, and

⁷ *U.S. v. Lakatos*, 241 F.3d 690, 695 (9th Cir. 2001).

1 planned dates of completion.”⁸ Similarly, the CPUC’s 2019 decision on
 2 deenergization policies listed as a finding of fact:

3 Educating public safety partners and the public about the characteristics
 4 and factors that the utility considers in determining whether to de-
 5 energize, such as high temperatures, high wind speeds, dry vegetation,
 6 and low humidity, enables public safety partners and the public to
 conduct parallel planning and preparation.⁹

7 Neither CPUC decision on deenergization requires PG&E to consider the factors in
 8 the OSC, the status of its vegetation management, nor additional factors Amici
 9 propose below. Thus, *Lakatos* is inapposite as this Court’s OSC does not undermine
 10 any CPUC order, nor conflict with any CPUC decision, nor limit the CPUC’s
 11 jurisdiction.

12 The CPUC has not addressed whether vegetation management should be
 13 taken into account in deciding where to initiate a PSPS. Neither has the CPUC
 14 ordered PG&E to systematically improve its information management and to link
 15 those approvals to its PSPS decision-making. The CPUC remains free to analyze
 16 these issues and adopt appropriate orders in its future rulemakings. The proposed
 17 probation conditions, augmented by Amici’s proposals, fill an immediate safety gap
 18 the CPUC has not yet addressed.

19 **B. PG&E’s Poor Record-Keeping and Information Management Drive its**
 20 **Criminal Conduct including the San Bruno Explosion, the Camp Fire, and**
 21 **other Fires PG&E Ignited While on Criminal Probation**

22 PG&E’s practices such as its lack of recordkeeping and data integrity resulted
 23 in its employees, contractors, and subcontractors failing to maintain records, skipping
 24

25 ⁸ CPUC Decision 20-05-051, DECISION ADOPTING PHASE 2 UPDATED AND
 26 ADDITIONAL GUIDELINES FOR DE-ENERGIZATION OF ELECTRIC FACILITIES TO
 MITIGATE WILDFIRE RISK (Rulemaking 18-12-005), Findings of Fact 56, May 28, 2020.

27 ⁹ CPUC Decision 19-05-042, DECISION ADOPTING DE-ENERGIZATION (PUBLIC SAFETY
 28 POWER SHUT-OFF) GUIDELINES (PHASE 1 GUIDELINES) (Rulemaking 18-12-005),
 Findings of Fact 31, May 30, 2019.

1 data input into information fields, poor design of record management systems, and
 2 allowing the “scheduling” of inspections in the past. (*See e.g.* OSC, p. 2, 12). Data
 3 management techniques commonly practiced for widely available Apps do not allow
 4 users to skip input of critical information (such as a zip code or location), or to book
 5 appointments in the past (such as a plane flight or hotel reservation). Despite PG&E’s
 6 operational experience spanning more than a century, substantial personnel,
 7 capitalization, and assets, orders of this Court and the CPUC, PG&E has not managed
 8 its data integrity process and personnel to prevent even the most basic data errors and
 9 mismanagement that fuel its reckless criminal conduct.

10 As the Court’s OSC points out, “[s]ince the commencement of the Offender’s
 11 probation alone, PG&E has ignited 20 or more wildfires in California, killing at least
 12 111 individuals, destroying at least 22,627 structures, and burning half a million
 13 acres.” (OSC p. 2). PG&E is under investigation for whether its operations caused the
 14 Zogg fire which took the lives of four people, including a mother and her 8-year-old
 15 daughter who unsuccessfully tried to escape the massive fire. The Zogg Fire killed
 16 these people while PG&E was under investigation for its role in the Kincade fire
 17 which caused widespread property destruction and polluted the air with particulates
 18 that compromise lung health. This Court should require conditions that address
 19 PG&E’s reckless Data Operations which endanger and take life, damage property,
 20 undercut its data vegetation management, and undermine safe operation as required
 21 by federal and state law.

22 PG&E’s practice of using spray paint to mark trees to be trimmed or removed
 23 compounds the danger of relying on incomplete or inaccurate data entry and
 24 information management methods.¹⁰ *Amici* respectfully recommends this Court’s
 25 proposed probation conditions be modified to include orders to improve the
 26

27
 28 ¹⁰ RESPONSE TO REQUEST FOR FOLLOW UP BY PG&E CONCERNING ITS OCTOBER
 26 SUBMISSION, p. 23, Case No. 14-CR-00175-WHA, November 18, 2020.

1 information created, maintained, and used at PG&E to inform decision-making about
 2 work deployment, vegetation management, electric and gas operation, safety and
 3 reliability conditions and issues, and power shutoffs.

4 **C. PG&E’s Corporate Conduct Constructs Risk and Endangers Public**
 5 **Safety**

6
 7 PG&E as a corporate entity, created and maintained a plethora of poor
 8 information management and record-keeping systems, that thwarted its ability to
 9 track its own work and transmit knowledge between workers, managers, contractors,
 10 and subcontractors about what to do. PG&E’s actions impair its vegetation
 11 management and decision-making about its operations including power shutoffs.
 12 This is not a case where a single employee created a poor information management
 13 or vegetation management system.

14 At issue in PG&E criminal probation is not merely the collective knowledge
 15 available at PG&E, known to its employees, contractors, or subcontractors. Rather,
 16 at issue is PG&E’s creation and maintenance of information and record management
 17 systems so recklessly poor that they undermine individual and collective knowledge
 18 and endanger public safety in violation of California and federal law.

19 “[E]nsuring that corporations have adequate procedures for generating and
 20 transmitting information through appropriate channels to personnel who can respond
 21 when problems are uncovered” supports “effective corporate compliance.”¹¹
 22 Corporations such as PG&E serve as knowledge-keepers and knowledge-
 23 transmitters. Consistent with the longevity of its operational function and assets,
 24 PG&E must maintain information and knowledge and transmit that information
 25 from one group of workers to another over the course of hours, days, or decades.

26 _____
 27 ¹¹ Mihailis E. Diamantis, *Functional Corporate Knowledge*, 61 WM. & MARY L. REV. 319, 326
 28 (2019).

1 PG&E constructed systems such as its vegetation management that rely on corporate
 2 knowledge keeping and transmission. One set of workers identifies trees to be
 3 trimmed or removed, and another set of workers brings the tools and chain saws to
 4 trim or remove the trees, hours, days, months, or years later. The smooth and prompt
 5 function of this process depends on maintenance of accurate information and
 6 knowledge systems and timely transmission of correct information.

7 The CPUC issued billions in penalties against PG&E for record-keeping
 8 failures. Those failures were at the heart of the San Bruno criminal conviction (in
 9 addition to PG&E's obstruction of justice). The poor record-keeping and
 10 information management systems PG&E created, maintains, or ignores, has fueled
 11 explosions, fire, death, and destruction. This must stop.

12 This Court has the power to order PG&E to improve its record keeping and
 13 information management systems to ensure that its knowledge-keeper failures do
 14 not result in more corporate crimes during and following its criminal probation. A
 15 large part of what this means is ensuring that corporations have adequate procedures
 16 for generating and transmitting information through appropriate channels to
 17 personnel who can respond when problems are uncovered.

18 Neither PG&E, nor its contractors or subcontracts can act on information it
 19 doesn't keep and accurately transmit. If the court does not order PG&E to better
 20 organize its information and ensure information accuracy, any order to act on the
 21 information about the status of vegetation management is meaningless to decision-
 22 making about power shutoffs or operation.

23 **D. PG&E's Recklessly Poor Information and Record-Keeping Management**
 24 **Institutionalize its Dangerous Operation and Undermine Decision-Making**

25 PG&E's reckless information management appears to have contributed to the
 26 Zogg fire as the tree marked for removal two years earlier was never removed, no
 27
 28

1 inspection occurred before the 2020 fire season, and a tree hitting the line is being
 2 investigated as the cause of the fire that led to the death of two people.

3 This Court has a duty and opportunity to make sure that PG&E's poor
 4 information management is not a corporate institutional strategy to keep knowledge
 5 from being readily available, thwarting efforts to hold the corporation accountable
 6 for its criminal and civil conduct. PG&E's failures to improve its system reflect its
 7 ongoing criminal thinking and reckless behavior that continues to pose a danger to
 8 public safety.

9 This Court has the jurisdiction and duty to impose probation conditions that
 10 help protect community safety and reform the offender. The Court may consider, but
 11 need not determine at this juncture, PG&E's motivation to maintain its recklessly
 12 poor information management and record-keeping systems. Jurisdictions
 13 considering criminal cases against PG&E for the Kincade and Zogg fires, as well as
 14 the CPUC, are advised to probe PG&E's motivations and information management
 15 conduct. Federal and state authorities can also consider whether PG&E's reckless
 16 information management systems that allow for entry of false and misleading
 17 information obstruct justice by violating prior court orders.

18 This Court's OSC expresses concern about PG&E's deficient and at times
 19 erroneous record-keeping as identified by the Monitor:

20 [T]here "continue to be gaps in PG&E's recordkeeping" of inspections
 21 and vegetation work, in violation of PG&E's WMP and fourth
 22 condition of probation. While acknowledging improvements since
 23 2019, the Monitor still found troubling errors. For example, within
 24 PG&E's records, "approximately 8,200 trees" displayed risk "scores
 25 indicating" they should be removed, but were nonetheless "marked in
 26 the internal system as *not* requiring tree work." The Monitor also
 27 reports, "PG&E's maps for EVM work are still not accurate and
 28 complete." Some maps omitted entire segments of circuits. In one case,
 the Monitor even found a radial clearance violation on the real-life
 segment of the circuit that was missing from the map; but for the

1 Monitor's inspection, this radial clearance violation would remain
2 today (*id.* at 11–13 (emphasis added)).¹²

3 Marking trees needing removal as “*not* requiring tree work” creates a
4 false record that prevents subsequent crews from being dispatched to
5 remove or trim the tree. False, or even poor, record-keeping and
6 information management systems institutionalize and digitize danger.
7 Records PG&E still keeps in analog form (where it has records) are not
8 integrated with digital records to enable complete and accurate
9 information to inform prudent action. PG&E's criminally reckless
10 information, record-keeping management and information
11 communications systems that allow such false entries turn trees into
12 deadly weapons near uninsulated powerlines and aging facilities.

13 Ordering PG&E to improve its information management systems relevant to
14 its PSPS will help protect the public from death and destruction of property while
15 PG&E is on probation. It will help track vegetation management related failures
16 such as those at issues in the Zogg fire, and failure to complete and track PG&E's
17 work at issue in the Kincade fire. In both cases, PG&E did not deenergize lines,
18 although awareness of information about work not done or improperly done should
19 have informed those deenergization decisions and initiated immediate work to
20 correct the gap.

21 Cal Fire reportedly blamed “the Kincade Fire – the largest in Sonoma County
22 history – on PG&E's failure to properly decommission a high voltage line that had
23 once fed power to a shuttered geothermal plant, according to the findings of its final
24 report obtained by NBC Bay Area.”¹³ “The company's failure to fully and properly
25 decommission the line, either by deenergizing or removing it, Cal Fire concluded,
26 was the root cause of the fire.”¹⁴ “Cal Fire went as far as recommending that PG&E

27 ¹² OSC, p. 15.

28 ¹³ Jaxon van Derbeken, *Kincade Fire Tied to PG&E Failure to Decommission an Unneeded High-Voltage Line – NBC Bay Area*, NBC BAY AREA, Oct. 23, 2020, <https://www.nbcbayarea.com/news/local/kincade-fire-tied-to-pge-failure-to-decommission-an-unneeded-high-voltage-line/2384828/>.

¹⁴ *Id.*

1 be charged criminally with multiple felony counts for recklessly causing the fire,
 2 which started one year ago.”¹⁵ Professor and former CPUC Commissioner Catherine
 3 Sandoval said “the Kincade fire a year later is yet another product of the company
 4 failing to track problems and deal with them preventatively. “It’s not just sloppy, it’s
 5 wrong,” she said. “The question becomes in legal terms, is it actually criminally
 6 negligent? Is it actually reckless?””¹⁶

7 Poor design of PG&E information management systems allowed conduct that
 8 undermines public safety such as skipping important field, not having information
 9 fields for critical components such as C-hooks, and scheduling inspections in the
 10 past (*See e.g.* OSC, p. 2, 12). Questions remain about whether such conduct was
 11 criminal recklessness that led to the 2019 Kincade fire, the 2020 Zogg fire, and the
 12 2018 Camp Fire for which PG&E pled to the commission of 86 deadly felonies.

13 Improving PG&E’s information management systems, data integrity, Data
 14 Operations, and communication of its information will improve PG&E’s daily work
 15 including its decision-making about deenergization. It will enhance visibility into
 16 problems that need to be fixed and work that is due or overdue, improving operation
 17 and reducing the need for deenergization that disrupts lives and livelihoods for the
 18 millions of Californians that have been subjected to frequent PG&E power shutoffs.

19 **III. PG&E’s Brief Submitted in Response to the OSC is Neither Verified** 20 **by a PG&E Officer Nor Supported by Cited Evidence** 21

22 When PG&E pled guilty to 84 felony charges relating to its fire killing 84 people
 23 in Butte County, its President stood up in Court and affirmed the plea to each count.
 24 Yet here, when responding to this Court’s OSC, brings forth no words of its officers
 25 and instead, only the argument of legal counsel as to what it is allegedly doing. By
 26

27 ¹⁵ *Id.*

28 ¹⁶ *Id.*; Professor Sandoval is also one of Amici counsel, here.

1 this conduct, PG&E demonstrates its failed “tone at the top” and lack of commitment
 2 to changing its conduct to promote safety. Any unsupported claim of conduct by
 3 PG&E’s counsel should be ignored.

4 **IV. PG&E’s Brief in Response to the OSC Fails to Recognize PG&E’s**
 5 **Lack of Effective Operation, and its Proposed Additions to the OSC**
 6 **are not Well-Designed to Protect Public Safety, are Vague, and**
 7 **Create Trap Doors that Undermine the OSC’s Goal to Protect**
 8 **Public Safety**

9 **(A) PG&E’s PSPS Decisionmaking and Operation is Not Effective as**
 10 **PG&E Effectively Admits it Does Not Currently Consider the Status of**
 11 **Vegetation Management and Compliance with Federal and State Law**

12 PG&E contends in its OSC Response Brief (p. 2) that it has developed a
 13 “sophisticated and demonstrably effective program” for deenergizations, its “Public
 14 Safety Power Shutoff (PSPS) program:

15 PG&E first developed its PSPS program in response to the October
 16 2017

17 North Bay Wildfires. (Dkt. 976 at 29.) Through large expenditures and
 18 the efforts of many PG&E employees, PG&E has evolved it into a
 19 sophisticated and demonstrably effective program that includes, among
 20 many other things, advanced models and analytics developed alongside
 21 third-party experts and informed by deep datasets, a wildfire safety
 22 operations center, one thousand weather stations and over three
 23 hundred high-definition cameras, a multitude of new switches and
 24 sectionalizers, and training for the hundreds of employees that execute
 25 PSPS events.

26 Sadly, PG&E's management of its electric and gas operations -- including its
 27 deenergization decision-making process and operation -- is neither sophisticated nor
 28 demonstrably effective. PG&E's failure to professionally and prudently manage
 information about its work and records of the facilities and assets PG&E installed or
 purchased, continues to fuel danger. Amici’s proposed probation conditions 13-16
 will improve PG&E’s decision-making and operational capability to protect public
 safety and mitigate the likelihood of future PG&E felonies while on probation.

B) The Scope of PG&E’s PSPS Should Consider Hazardous Vegetation Including that Which Borders and is Likely to Make Contact with its Lines and Facilities

PG&E effectively admits that it is behind in vegetation management when it states in its OSC Brief that the “Proposed Conditions will increase the scope of PG&E’s PSPS events because they add a new trigger for de-energizing lines.” (p. 2) PG&E’s opposition to factors 11 and 12 raises more questions than they answer.

This is an example of where the lack of an affidavit from any PG&E officer or employee in support of PG&E’s brief leaves this Court and the parties with insufficient information to assess PG&E’s arguments:

- Does PG&E admit that it does not at present consider the status of vegetation management work in deciding which circuits and communities should endure a PSPS or in planning work to mitigate the need for PSPS?
- Does PG&E admit that it is so behind in its vegetation management work that having to consider this factor would enlarge power shutoffs? How large is the footprint likely to endure more PSPS?

The status of vegetation management should be a factor in considering PSPS, as well as in daily operations and plans to forestall the need for more power shutoffs. Particularly where PG&E and its contractors or subcontractors have identified trees for trimming or removal, but the required work has yet to be performed, or where inspections and patrols have not been able to evaluate the current conditions, considering the status of vegetation management is crucial to well-planned operation and deenergization decision-making. Accurate and complete information supports by Amici’s proposed conditions 13-16 will foster decision-making that protects public safety and complies with federal and state law.

Regarding the scope of vegetation management considered in PSPS decision-making, PG&E's OSC Brief states on p. 4:

In expanding the scope of PSPS for the 2021 fire season to account for hazard trees *outside* the footprint determined by the existing PSPS models, PG&E will need to identify those categories of trees or limbs that are subject to pending work that will be taken into account.

Proposed condition 11 would require PG&E to consider the status of vegetation management for "trees and/or limbs bordering those lines" including violations of federal and state law. PG&E does not explain why trees bordering those lines are "*outside* the footprint determined by the existing PSPS models." This provides another example of where an affidavit from a PG&E officer, under the penalty of perjury, would have better informed the court as to the facts underlying these assertions. PG&E should be taking into account hazardous trees and vegetation including those likely to make contact with the line, whether through growth or as windblown hazard due to the type of vegetation (such as a eucalyptus tree whose oily bark tends to peel off).

C) PG&E's Proposal to Limit Condition 11 to Priority 1 and 2 Vegetation Lacks Sufficient Information about the Origin of those Priorities, What Priority Categories are Omitted, and Analysis of the Likely Public Safety Consequences of Limiting the Probation Conditions

PG&E's additional proposed language on pg. 4 of its OSC Brief intends to limit the applicability of Condition 11, but does so in a way that creates inappropriate escape hatches from the condition and compliance with state and federal law. PG&E states that its proposal on pg. 4 of its OSC Brief:

"[i]s intended to prescribe with specificity the categories of trees and limbs that fit this definition so that the Court, the public and PG&E personnel have a clear and common understanding that the additional PSPS blackouts likely to result from the Proposed Conditions will be based on the presence of trees or limbs that present an elevated safety

1 risk substantially above that posed by healthy trees.”

2 PG&E should be considering trees or limbs that pose an elevated safety risk
3 its failure to take appropriate steps to remove hazard trees. PG&E’s attempts to limit
4 this consideration are vague, fail to define which types of hazards would be
5 excluded by its proposals, and create an escape hatch from the conditions; its
6 approach is inconsistent with the intent to protect public safety and rehabilitate the
7 offender. Additionally, PG&E’s proposals to exclude vegetation management where
8 there was an “access issue” are inconsistent with the goals of its federal criminal
9 probation and California law under the Cal Pub. Util. Code and GO 95.

10 PG&E proposes on pg. 4 of its OSC Brief to limit condition 11 to vegetation
11 it classifies at Priority 1 or 2, but fails to identify the origins of those classifications
12 or include analysis of what those classifications would exclude. PG&E proposes:

13 In determining which distribution lines to de-energize during a PSPS
14 event, PG&E will implement this condition by July 1, 2021 by
15 considering the existence of all outstanding vegetation management
16 work tagged “Priority 1” or “Priority 2” within PG&E’s service
territory that is subject to potential de-energizations.¹⁷

17 Amici respectfully suggest this Court require PG&E to provide this Court and
18 the public, including Amici, more information about its “priority 1 and 2” vegetation
19 management categories, including information about whether there are other
20 applicable classifications, the origins of the classifications, and analysis of excluding
21 other classifications from the probation condition order.

22 PG&E states on pg. 5 of its OSC brief that it:

23 “uses two tags—Priority 1 and Priority 2—for priority work where
24 trained vegetation inspectors identify trees or limbs that currently
25 present elevated risk and must be worked on an expedited basis.
26 Inspectors use Priority 1 tags for vegetation (i) in contact or showing
signs of previous contact with a primary conductor; (ii) actively failing

27
28 ¹⁷ PG&E OSC Brief, p. 4.

1 or at immediate risk of failing and which could strike PG&E's facilities;
 2 or (iii) presenting an immediate risk to PG&E's facilities. Inspectors
 3 use Priority 2 tags for vegetation that does not rise to the level of
 4 Priority 1 vegetation, but has encroached within the PG&E minimum
 5 clearance requirements or has an identifiable potential safety issue
 6 requiring expedited work."

7 PG&E offered no description for other priority vegetation categories. Neither
 8 did it explain where these priorities come from. Neither CPUC General Order 95 nor
 9 its deenergization orders, D.1905042 and D.20-05-051, Rulemaking 18-12-005
 10 contain these classifications.

11 PG&E's arguments fail to state in which priority tier it classified the grey pine
 12 tree under investigation in the Zogg fire. (See OSC p. 11 for a photo of the grey pine
 13 tree under investigation as a cause of the Zogg fire). The OSC state on pg. 6 that
 14 "PG&E found that 334 trees or limbs fell on distribution lines during just four
 15 PSPSs in October. Of these fallen trees, PG&E estimated that 234 would have
 16 caused arcing (in which electricity would have flown to the closest conducting
 17 surface, such as the dry, grass-covered earth)." However, PG&E has yet to publicly
 18 release information about those 334 trees and limbs or its analysis of *why* they fell
 19 on distribution lines in the October 2019 windstorms.

20 Neither has PG&E explained to this Court and the parties which *priority* tier
 21 those trees and limbs were classified in, whether priority 1, priority 2, or some other
 22 unnamed priority. Without that information, this Court and the parties before it
 23 cannot analyze PG&E's proposal to limit mandatory consideration of vegetation
 24 management to priority 1 and 2 vegetation as PG&E has not told us what this would
 25 omit or informed the Court of its analysis of the consequences of such exclusion.

26 PG&E fails to explain what its timeline is for other priority categories when it
 27 states on p. 5 of its OSC Brief that "PG&E's policy calls for all Priority 1 trees to be
 28 worked within 24 hours. PG&E's policy calls for Priority 2 trees to be addressed
 within 30 days, absent access issues." Neither does PG&E explain its process or

1 timeline for resolving access issues. CPUC General Order 95 Rule 18 recognizes
 2 that access issues can reasonably extend the deadline for addressing vegetation
 3 management issues, but this does not create an indefinite timeline. Neither does it
 4 absolve PG&E of its duty to operate safely under CA PU Codes 451 and 8386(a),
 5 Public Resources Code Section 4293, GO 95, FERC FAC-003-4.

6 **D) PG&E Should be Required to Immediately Comply with the Proposed**
 7 **Probation Conditions; Compliance by July 2021 is Too Late to Protect**
 8 **Public Safety**

9 PG&E proposes a more than six-month delay in the timeline to comply with
 10 the Court's proposed probation conditions, requesting a July 1 start date through its
 11 additions in bold to condition 12:

12 Proposed Condition 12: To the extent that such information shows that
 13 such trees and limbs present a safety hazard in the event of a windstorm,
 14 PG&E must make a specific determination with respect to that
 15 distribution line and it must de-energize it unless PG&E finds in writing
 16 that there are specific reasons to believe that no safety issue exists.
 17 **PG&E will implement this condition by July 1, 2021 by developing**
 18 **a methodology to de-energizeline segments in areas subject to**
 19 **potential de-energizations thathave outstanding Priority 1 or**
 20 **Priority 2 vegetation management work when forecast conditions**
 21 **are above specified fire-risk thresholds, absent a documented**
 22 **determination that de-energization is not warranted. (OSC Brief,**
 23 **p. 6)**

24 PG&E's proposed delay endangers public safety for too long. PG&E is
 25 currently required by CPUC General Order 95, Rule 18 to maintain records and an
 26 auditable maintenance program for their facilities.

27 Amici recommend this Court order PG&E to comply with Condition 12
 28 immediately, or that PG&E provide a declaration as to why it cannot do so
 immediately, despite the Court's previous orders and requirements of the CPUC
 including General Order 95.

1 Likewise, PG&E's proposed three-month timeline to report to the Court and
 2 monitor on its PSPS thresholds that account for the status of its vegetation
 3 management is unacceptable and dangerous:

4 Because these thresholds will serve as an additional trigger for de-
 5 energizations of residences and businesses, the precise mechanics of
 6 calculating and setting those thresholds will be based on expert analyses
 7 over the coming months. Given the potential public safety risks posed
 8 by larger de-energizations, these analyses will need to consider how
 9 many customers may lose power in potential events and how long they
 10 may remain without power. PG&E will share those finalized thresholds
 11 and the methods for implementing them with the Court and the Monitor
 12 in the next three months.

11 Amici respectfully recommend this Court order PG&E to report to the Court,
 12 the Monitor, and parties (including Amici) within three months about its
 13 improvements to its information management system to improve vegetation
 14 management and information relevant to daily operation, including PSPS. Amici
 15 also respectfully recommend this Court order PG&E to report in that 3-month period
 16 its hiring a Data Operations executive and team that reports to the CEO and to the
 17 Monitor and Board.

18 **E) PG&E Effectively Admits that its Poor Information Management Does**
 19 **Not Currently Support Consideration of its Vegetation Management in its**
 20 **PSPS Decision-making, Despite GO 95, Rule 18's Requirement that**
 21 **Utilities Create an Auditable Vegetation Management Program**

22 PG&E tacitly admits that its poor information management does not currently
 23 support consideration of its vegetation management in its PSPS and operational
 24 decision-making:

25 While PG&E's current infrastructure does not provide a means by which
 26 outstanding Priority 1 and Priority 2 trees are readily incorporated into the
 27 PSPS-scoping process, PG&E will build the systems and tools needed to
 28 streamline the availability of Priority 1 and Priority 2 tree data to the team
 that is scoping PSPS events in a manner that can be integrated with the

1 meteorological and other tools used to scope PSPS events. (OSC Brief, p. 6)

2 CPUC General Order 95, Rule 18(2)(a) requires that all companies subject to
3 the rule “shall establish an auditable maintenance program for their facilities and
4 lines.” PG&E fails to explain why that auditable maintenance program and records
5 required for compliance with GO 95 and other CPUC rules are not already readily
6 available to PG&E teams making decisions about PSPS events, work to prevent
7 PSPS events, and for daily operation and strategic decision-making.

8 Proposed probation conditions 11 and 12, supplemented by Amici’s proposed
9 conditions 13-16, will ensure that PG&E takes its vegetation management status into
10 account, rather than leaving it to PG&E’s indefinite timeline to build systems and
11 tools to integrate vegetation management into PSPS. Proposed conditions 11-12 and
12 Amici’s proposed conditions 13-16 are appropriate to establish a timeline to
13 improve information and record management and communication of information to
14 PG&E decision-making and work teams, so that work is appropriately and timely
15 done to protect public safety from this recidivist felon, PG&E. PG&E should report
16 to this Court, the monitor, the parties to this proceeding, the CPUC, and the public
17 on its success in meeting the timeline under GO 95 and any priority categories, and
18 in resolving access issues.

19 **F) Access Issues Do Not Provide an Escape Hatch from the Duty to Comply**
20 **with Federal or State Law or PG&E’s Probation Conditions; PG&E**
21 **Should Document Access Issues and take Appropriate Steps to Resolve**
22 **Them Promptly**

23 PG&E’s brief implies that access issues should create an escape hatch from
24 compliance with the proposed probation conditions. PG&E’s OSC Brief, p. 5, states
25 “PG&E’s policies will call for non-priority trees in high fire threat areas with strike
26 potential that are flagged for removal because they show signs of mortality to be
27 addressed within six months, absent access issues.” Its brief fails to provide any
28 information about what PG&E is doing to resolve access issues, or to recognize that

1 access issues do not absolve it of the duty to comply with its probation conditions or
2 federal or state law.

3 Clearing a hazardous tree needs to be treated as seriously as dealing with any
4 deadly hazard. The person brandishing a gun poses an unlawful risk of death and
5 PG&E should provide appropriate information so law enforcement authorities can
6 appropriately deal with that threat. A tree too close to the line or vegetation that
7 threatens contact with a line or utility facilities also poses a deadly threat that needs
8 to be eliminated appropriately and swiftly

9 PG&E's November 18, 2020 "RESPONSE TO REQUEST FOR FOLLOW
10 UP PG&E CONCERNING ITS OCTOBER 26 SUBMISSION" described an
11 incident it might categorize as an "access" issue, but its OSC Brief fails to explain
12 whether this is the type of incident that PG&E argues should create an effective
13 exemption from complying with the probation condition. PG&E's states:

14 PG&E is aware that work in the Zogg Mine Road area was interrupted
15 in October 2018 due to interactions with a resident of Zogg Mine Road,
16 who believed that PG&E crews were cutting trees unnecessarily and
17 had previously brandished a firearm to tree crews attempting to work
18 in the area and was threatening to do so again. PG&E is also aware
19 based on its records that inquiries were subsequently made in October
20 2018 about attempting to secure help from law enforcement to stand by
21 and protect tree crews against the resident that had brandished a
firearm. Among other things, PG&E is investigating what role, if any,
that work interruption played in the two Gray Pines apparently not
having been worked.¹⁸

22 This incident happened nearly two years before the Zogg fire. PG&E failed to
23 explain and document whether it attempted to secure law enforcement help to
24 protect tree crews doing work, or any other efforts to use the civil process or
25

26
27
28 ¹⁸ PG&E, RESPONSE TO REQUEST FOR FOLLOW UP PG&E CONCERNING ITS
OCTOBER 26 SUBMISSION, Case No. 14-CR-00175-WHA, p. 25, November 18, 2020.

1 coordinate with law enforcement to complete necessary work. It cannot claim
2 “access issues” as a means to avoid the work so critical to public safety.

3 Amici’s proposed conditions 13-16 will promote better information
4 management to track alleged “access” issues and deal with them in a timely manner.
5 Without such a requirement, its allegations about access are a mere excuse to put the
6 removal on an indefinite schedule or on the “never” schedule.

7 This Court should reject PG&E’s proposal on p. 5 of its OSC brief to deem
8 access issues as an escape hatch from the probation conditions. PG&E proposed
9 “policy PG&E is in the process of implementing for the 2021 fire season, trees
10 identified as dying will be removed within six months, **absent access issues.**” (*Id.* at
11 5). PG&E’s proposal is inconsistent with California law and common sense.
12 General Order 95, Rule 18 does not allow access issues to create an exemption from
13 compliance with that order or from PG&E’s safety responsibilities. It only allows a
14 reasonable extension of the time for compliance with the rules, where appropriate.

15 General Order 95, Rule 18(a)(2)(b) states, in pertinent part:

16 Correction times may be extended under reasonable circumstances, such as:

- 17 · Third party refusal
- 18 · Customer issue
- 19 · No access
- 20 · Permits required
- 21 · System emergencies (e.g. fires, severe weather conditions)

22 GO 95, Rule 18 only allows for extension of time under reasonable
23 circumstances to comply with the Order’s rules. It does not excuse vegetation
24 management duties. PG&E is required to initiate procedures to obtain access
25 including where appropriate, requesting the assistance of local law enforcement or
26 using civil process to obtain access if letters and inquiries are unsuccessful.

27 Allegations about access issues should not excuse failure to remove trees
28 within 30 days, but instead should trigger appropriate escalation and support
procedure so that removal is promptly accomplished, not years later. PG&E’s poor

record-keeping about access issues thwart the follow-up to resolve those issues. Lack of follow-up within a reasonable time both fuels danger and reflects PG&E's non-compliance with this court's orders and California and federal law.

V. PG&E's Failure to Document, Follow-up, and Resolve Access Issues Violates its Duty of Safe Operation and Raises Concern that PG&E's Conduct Obstructs Justice

PG&E's probation conditions modified on April 2019 required, among other things, that PG&E:

1. PG&E must fully comply with all applicable laws concerning vegetation management and clearance requirements, including Sections 4292 and 4293 of the California Public Resources Code, CPUC General Order 95, and FERC FAC-003-4.¹⁹

4. PG&E shall maintain traceable, verifiable, accurate, and complete records of its vegetation management efforts. PG&E shall report to the Monitor on the first business day of every month on its vegetation management status and progress, and make available for inspection all related records at the Monitor's request.

Additional conditions were added per the Offender's Stipulation with the Monitor and the U.S. DOJ to require: (Condition 8) an in-house vegetation management inspection manager to oversee a number of workforce resources; (Condition 9) a reasonable search for information about transmission asset age and, where available, for PG&E to record the age and date of installation of those components; and (Condition 10) a Transmission Inspection Program.

PG&E's responses in its brief and answer to the question about the Zogg fire raise concerns about whether PG&E has fully complied with its probation

¹⁹ Dkt. No. 1040, April 2019. OSC p. 4.

1 conditions. PG&E's apparent failure to take steps necessary to track and execute
 2 removal of a tree identified as hazardous, its years long delay in such removal as
 3 indicated by the facts relevant to the Zogg fire, raise questions about whether
 4 PG&E's conduct obstructs justice. By not maintaining adequate records of its work
 5 and allowing false information to be input such as scheduling inspections in the past
 6 (See OSC pp. 2, 12, and PG&E Nov. 2018 brief, p. 18), PG&E's conduct obstructs
 7 justice by making it exceedingly difficult for federal or state authorities or PG&E to
 8 monitor compliance with federal and state law.

9 PGE's lack of records about access issues and its follow-up to resolve them
 10 also frustrate analysis about steps needed to promote access. With more information,
 11 the CPUC could order PG&E to conduct public relations campaigns and coordinate
 12 with state and local government and law enforcement to educate the public about
 13 access needs. This information can identify the need for clarity about when permits
 14 are required for vegetation removal, and underscore the need to ensure that removal
 15 is done properly, for example that PG&E does not cause erosion or other problems
 16 in the course of vegetation inspection and removal.

VI. This Court Should Order PG&E to Use Internet of Things Devices Such as Chips or QR Codes Instead of Spray Painting Trees in High Wildfire Danger Zones to Protect Public Safety

17
 18
 19
 20 PG&E's current practice of spray-painting trees to tag them for trimming or
 21 removal (PG&E Nov. 18 Brief, p. 23) has left crews to guess in some instances
 22 about which tree to remove, particularly as spray paint color fades over time or
 23 people paint over the spray paint.

24 This Court should require PG&E to initiate modern systems such as using
 25 sensors or QR codes linked to information management systems to provide the
 26 tree's geolocation and information about the tree including tracking its removal
 27 timeline. Businesses from Amazon to the post office use QR codes to track packages
 28

and mail ballots.²⁰ Farmers are increasing embedding sensors in the soil to measure moisture, humidity, and other factors.²¹

PG&E remains stuck in the 1980s with its spray paint cans, graffitiing trees with these very important symbols that signify work to be done. Yet, time, rain, more spray paint, vegetation overgrowth and other factors can obscure these signs. Subsequent trimming and removal work may be missed and crews left to guess about which vegetation to trim or remove. Use of sensors, QR codes, and other IoT devices can create geolocation and identification tags that will better track and identify work to be done and protect public safety.

The Zogg fire highlights the faults with PG&E's spray paint method. When much better methods are commonly used for tracking workflow in the twenty-first century, it does not reflect prudent management for PG&E to continue to rely on spray paint cans to avoid potentially deadly contact between a tree and a live electric wires or facilities.

Amici respectfully recommend this Court consider condition 15 to bring PG&E's work to modern standards to avert ongoing safety hazards and improve the tracking of work to be done near PG&E's lines. Approving Amici's proposed order will promote information integrity, work tracking, and communication to better inform decisions about deenergization, work to prevent the need for power shutoffs, daily, and strategic operation.

²⁰ United States Post Office, Office of the Inspector General, Package Delivery Scanning-Nationwide, Oct. 27, 2017, <https://www.uspsig.gov/document/package-delivery-scanning-%E2%80%95nationwide>; Amazon, Interactive: Unpack your Label, Interactive: Unpack your label, <https://www.aboutamazon.com/news/interactive-unpack-your-label> (last visited Jan. 23, 2021).

²¹ Sanjeev Verma, *How IoT Soil Condition Monitoring Is Empowering Farmers*, IOT FOR ALL, Nov. 6, 2019, <https://www.iotforall.com/soil-moisture-monitoring>.

VII. Conclusion

In closing, *Amici* respectfully request consideration and entry into the record of this brief responding to the OSC. We ask to be heard at the hearing on this matter so that the Court can consider facts and a perspective otherwise absent from the record before this Court. We appreciate the Court's consideration of *Amici*'s arguments and suggestions respectfully submitted to protect public safety, compliance with federal and state law, and to promote PG&E's rehabilitation to better serve Californians and all affected by PG&E's conduct.

Respectfully submitted,

CATHERINE J. KISSEE-SANDOVAL
Associate Professor
Santa Clara University School of Law

Dated: January 27, 2021

/s/Catherine J.K. Sandoval, Esq.,

AGUIRRE & SEVERSON, LLP

Dated: January 27, 2021

/s/Maria C. Severson

Maria C. Severson, Esq.,
Attorneys for *Amici* Petitioners
Alex Cannara and Gene A.Nelson